

1 JERRY S. BUSBY  
2 Nevada Bar #001107  
3 GREGORY A. KRAEMER  
4 Nevada Bar #010911  
5 COOPER LEVENSON, P.A.  
6 3016 West Charleston Boulevard - #195  
7 Las Vegas, Nevada 89102  
8 (702) 366-1125  
9 FAX: (702) 366-1857  
10 [jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)  
11 [gkraemer@cooperlevenson.com](mailto:gkraemer@cooperlevenson.com)  
12 Attorneys for Defendants  
13 SMITH'S FOOD & DRUG CENTERS, INC.  
14 JASON SONNENBURG  
15  
16

17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 LINDA SEVERSON,

20 Case No.

21 Plaintiff,

22 v.

23 SMITH'S FOOD & DRUG CENTERS, INC.,  
24 a Foreign Corporation, d/b/a SMITHS;  
25 JASON SONNENBURG, an Individual; DOE  
EMPLOYEE; DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

17 **NOTICE OF REMOVAL**

18 Defendants.

19 Defendants, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") and JASON

20 SONNENBURG ("SONNENBURG") hereby give notice of their removal of Case No.

21 A-20-820954-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This

22 Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal,

23 Defendants state as follows:

24 **I.**

25 **NOTICE OF REMOVAL IS TIMELY**

26 1. On September 10, 2020, Plaintiff, LINDA SEVERSON, originally filed this lawsuit  
27 against SMITH'S and one of its employees, JASON SONNENBURG ("SONNENBURG"), a  
28 Nevada resident. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including

1 the Complaint and process, is attached hereto as Exhibit "A".

2       2. SONNENBURG was served with process on or about September 15, 2020.

3       3. SMITH'S was served with process on or about September 16, 2020.

4       4. The Complaint filed and served on SMITH'S contains a prayer for relief for "General  
5 damages in an amount in excess of \$15,000.00;". (Compl. at 5).

6       5. Before litigation was filed in Nevada State Court, Plaintiff's attorney sent a letter to  
7 SMITH'S Third Party Claim Administrator dated February 5, 2020. Therein, Plaintiff itemized  
8 medical expenses in the total amount of \$175,893.36. A copy of the demand letter dated February 5,  
9 2020 is attached hereto as Exhibit "B". Based upon the amount of medical bills allegedly related to  
10 this accident/litigation, Defendants believe that the "amount in controversy" exceeds the  
11 jurisdictional minimum for diversity jurisdiction.

12       6. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

13           If the case stated by the initial pleading is not removable, a notice of  
14 removal may be filed within thirty days after receipt by the defendant,  
15 through service or otherwise, of a copy of an amended pleading,  
16 motion, order or other paper from which it may first be ascertained  
that the case is one which is or has become removable, except that a  
case may not be removed on the basis of jurisdiction conferred by  
section 1332 of this title more than 1 year after commencement of the  
action.

17       7. The following pleadings have been entered and/or filed in State Court:

- 18           a. Plaintiff's Complaint filed September 10, 2020;  
19           b. Affidavit of Service for SMITH'S filed September 18, 2020;  
20           c. Affidavit of Service for SONNENBURG filed September 25, 2020; and  
21           d. SMITH'S Answer to Plaintiff's Complaint filed October 5, 2020.

22       8. Other than the pleadings discussed above, no further proceedings have taken place in  
23 District Court, Clark County, Nevada as of the filing of this notice of removal.

25           **II.**

26           **DIVERSITY JURISDICTION EXISTS**

27       9. This is a civil action over which this Court has original jurisdiction pursuant to 28  
28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in

1 controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between  
2 citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

3           **A.     The Amount in Controversy Requirement is Satisfied.**

4       10.   The Complaint filed and served on SMITH'S contains a prayer for relief for "General  
5 damages in an amount in excess of \$15,000.00;". (Compl. at 5).

6       11.   Plaintiff's demand letter of February 5, 2020, indicates that Plaintiff has incurred  
7 medical expenses in the amount of \$175,893.36. (*See Exhibit "B"*).

8           **B.     The Parties Are Diverse.**

9       12.   The diversity of citizenship requirement is satisfied. Defendants are informed and  
10 believe that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada.  
11 (*See Compl. ¶1*).

12       13.   SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio  
13 Corporation with its principal place of business in the State of Utah.

14       14.   SONNENBURG was at the time of the filing of Plaintiff's Complaint and now is now  
15 a citizen and resident of the State of Nevada. However, SONNENBURG is a sham Defendant named  
16 only to defeat diversity of citizenship jurisdiction. SONNENBURG could not have committed any  
17 acts of independent or direct negligence against Plaintiff as he was not working at the SMITH'S  
18 store when Plaintiff's accident occurred. Under the Fraudulent Joinder Doctrine, SONNENBURG'S  
19 citizenship should be ignored.

20           **III.**

21           **REMOVAL TO THIS JURISDICTION IS PROPER**

22       15.   Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state  
23 court action to this Court is appropriate.

24       16.   Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and  
25 division embracing the place where the state action is pending 28 U.S.C. §108.

26       17.   Defendants reserve the right to amend or supplement this Notice of Removal.

27       18.   Defendants reserve all defenses, including, without limitation, the defense of lack of  
28 personal jurisdiction.

19. Defendants request a trial by jury of all issues.

20. Defense counsel is providing Plaintiff, by and through her counsel, written notice of the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). Further, Defense counsel is filing a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court, Clark County, Nevada, where the action is currently pending.

Dated this 15th day of October, 2020.

## COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby

Jerry S. Busby  
Nevada Bar #001107  
Gregory A. Kraemer  
Nevada Bar #010911  
3016 West Charleston Boulevard - #195  
Las Vegas, Nevada 89102  
Attorneys for Defendants  
SMITH'S FOOD & DRUG CENTERS, INC.  
JASON SONNENBURG